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Attorneys for GREGORY BUONOCORE,  
an individual on behalf of himself  
and all others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GREGORY BUONOCORE, an individual  
on behalf of himself and all others similarly  
situated;

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY; and DOES 1  
through 10 inclusive;

Defendants.

CASE NO. CV 08 0184 PJH

**[PROPOSED] ORDER RE:  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

JUDGE: The Honorable Phyllis Hamilton  
CTRM: 3  
DATE: August 13, 2008  
TIME: 9:00 a.m.

Defendant State Farm's motion for judgment on the pleadings for plaintiff Buonocore's failure to state a claim pursuant to Federal Rule of Civil Procedure 12(c) came on regularly for hearing before this Court on August 13, 2008 at 9:00 am. in Courtroom 3, the Honorable Phyllis Hamilton presiding. All parties appeared through counsel. After full consideration of the parties papers,

1 **IT IS HEREBY ORDERED:** that State Farm's motion for judgment on the pleadings for  
2 failure to state a claim is DENIED.

3 The Court bases its decision on the following grounds:

4 1. State Farm improperly relies on discovery responses to prove Saremi liable  
5 where admission of such evidence relating to compromise negotiations is barred under Federal  
6 Evidence Rule 408;

7 2. Plaintiff's Filing of An Underinsured Motorist Claims Does Not Constitute An  
8 Admission of Liability

9 3. The Right Of Offset Pursuant to Insurance Code 11580.2(e) Is Different From  
10 The  
11 Right To Reimbursement In Section II, And Therefore Insurance Code 11580.2(e)  
12 Does not Support The Right To Reimbursement

13 4. Insurance Code 11580.2(p)(5) Does Not Support State Farm's Application of  
14 Offset To The \$25k In Medical Expenses Paid By State Farm

15 5. "Limits of Liability Under Coverage U" Does Not Support State Farm's  
16 Reimbursement Provision.

17 6. There Must Be A Judicial Determination of Liability Before Farmers Has The  
18 Right of Reimbursement Pursuant To the Terms of Its Form Automobile Policy

19 7. A Release of Liability Extinguishes All Rights and Therefore Bars "Liability"  
20 Required by Section II.

21 8. The Rule of Contract Interpretation Requires The Reimbursement Clause In  
22 Section II To Be Interpreted To Protect The Insured's Reasonable Expectation If The Term  
23 "Liable" Is Ambiguous

24 Plaintiff's request to amend the complaint to substitute a new plaintiff is hereby  
25 GRANTED. Plaintiff shall file the first amended complaint within seven days.

26  
27 Dated: \_\_\_\_\_

28 \_\_\_\_\_  
Honorable Phyllis Hamilton  
United States District Judge

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